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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,296	08/16/2001	Rabindranath Dutta	AUS920010531	3181
7590		04/24/2006	EXAMINER	
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8107 Carvel Lane		ART UNIT		
Houston, TX 77036		PAPER NUMBER		
		2163		

DATE MAILED: 04/24/2006

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/931,296
Filing Date: August 16, 2001
Appellant(s): DUTTA ET AL.

Darcell Walker
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 13, 2006 appealing from the Office action mailed March 1, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Bentley et al. (U.S. Patent No. 6,341,291).

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Bentley et al (U.S. Patent No. 6,341,291).

Regarding claims 1, 10, 11, 16, 17, 22, 23 and 28, Bentley discloses a program, method and system for maintaining, accessing and executing legacy computer software programs stored in a central location comprising: (fig. 10)

a database created for storing multiple types of software programs (fig. 10, items 2 and 3, and col. 2, lines 20-29), developed over a period of time, each software program being stored as a separate and independent software program; (col. 17, lines 35-45)

a computing device connected to said database capable of interacting with said database for the purpose of retrieving and executing software programs stored in said database; (fig. 10, items 1 and 4; col. 15, lines 10-15)

a interface device connected to computing device for interacting with said computing device; (fig. 10, item 20) and

a computing network for connecting said interface device and said computing device.
(fig. 10, *COMPUTER NETWORK*)

Regarding claims 2 and 12, Bentley discloses multiple software programs, each software program being capable of executing in a computing environment. (col. 15, lines 29-32)

Regarding claims 3 and 13, Bentley discloses software programs are stored in software directories according to the type of software program. (col. 17, lines 63-66)

Regarding claims 4 and 15, Bentley discloses software directories include directories for operating system programs, application programs and utility programs. (col. 18, lines 8-15)

Regarding claims 5 and 14, Bentley discloses links that connect set of previously identified software programs such that the connected software programs can be accessed sequentially. (col. 17, lines 29-34)

Regarding claim 6, Bentley discloses the interface is a computer terminal. (fig. 10, item 20)

Regarding claim 7, Bentley discloses the computing device is a server. (fig 10, items 1 and 3)

Regarding claim 8, Bentley discloses said server comprises a cpu, memory, simulator and software retrieval programs. (fig. 6, items 208, 210, 212 and 214)

Regarding claim 9, Bentley discloses multiple interface devices capable of interacting with a server. (fig. 10)

Regarding claims 18-21 and 24-27, Bentley discloses a server and database for executing software programs. (fig. 10, items 1-4)

(10) Response to Argument

I. Summery of Applicant's Invention

Applicants claim legacy computer software programs stored in a central location. According to the disclosure, legacy programs span time from the introduction of computers and software beginning in the 1950's to software products being developed today (see Applicant's summery). Applicants further disclose that the key element for the system of the present invention is a computer programs database. This database would be a catalog of software applications "starting from the earliest FORTRAN Compiler, to such programs as DOS, OS2 and Xilog", (see Applicant's summery). Examiner notes, that according to Applicant's own disclosure, such a database would require to store a number of compilers in order to store the software in executable form (summery). However, this feature, **a number of compilers**, which is necessary to execute complicated programs of different type and in different computer languages, such as xml, C++, Java, FORTRAN, to mention a few, is not included in any of the

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databases, this feature is not included in any of the claims. This in effect, points Examiner's focus to the meaning of legacy programs as claimed, and based on this observation, it appears that the legacy programs claimed are equivalent to any programs in any form, even programs of same type, since every program is generated over a period of time and none of the necessary compilers needed to execute the supposed legacy programs are claimed.

II. Summery of Bentley et al. (Prior Art used)

Bentley describes a system used in product design and development (abstract, Bentley). This system enables multiple persons working on a project to update the project information. To enable the product design and development system, Bentley provides a repository (or a database, fig. 10, item 2) storing a plurality of engineering models. Engineering models include components. Each component has a unique identifier, a set of fields, each data field having a data type and a data value, a **program** that interprets and modifies the fields, and optionally a list of dependent components (col. 2, lines 12-40). In summery, Bentley at least discloses every component comprises a program, and all components are stored in a database (fig. 10, item 2). Hereinafter, for the purposes of discussion, Examiner will use the terms components, programs, and software, interchangeably, since all these terms have the same meaning. Recall, every component has at least a program, hence, a database of programs or a database of components is essentially the same. Second, Bentley's repository, item 2, fig. 10, hereinafter is equivalent with database and projectbank CDB, see fig. 10, col. 15, lines 27-29, Bentley.

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III. Prior to Arguments and responses, Examiner notes that the Appeal Brief submitted on February 13, 2006 does not directly map to independent claims for specific limitations, instead limitations are argued in general.

IV. Arguments and Responses

On pages 7 and 8 of the 2/13/06 response, Applicant argues that Bentley programs serve system purposes similar to the programs in block 17 of Applicant's invention, but not the programs in block 10.

Applicant describes software server device 17 as a server containing architecture to control the maintenance, access, retrieval and execution of the software programs in the database (see page 9, lines 4-8, Applicant's disclosure). Block 17 does not include programs stored in the database. Bentley uses programs equivalent to Applicant's block 17, for accessing and maintaining programs in the database; programs (1) and (4) of Bentley (fig. 10) having essentially the same function as block 17. Note, components (programs) in database 2 are stored separately from programs 1 and 4 in Bentley, same as Applicant's legacy programs in database 10.

On page 8 of the 2/13/06 response, Applicant argues that Bentley's programs "are not the type one would externally access to perform some task".

On the contrary, no other computer or program directly accesses Bentley's components (programs, fig. 10, item 2). Instead, users on individual computers (20) over a network execute

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programs 4, which connect to server program 1 to obtain the components (programs) 10 (fig. 10, col. 15, lines 33-38).

On page 8 of the 2/13/06 response, Applicant asserts with regard to some dependent claims that many of Examiner's cites do not support the Examiner's assertions.

On the contrary, Examiner believes that every citation cited by the office reads on the claimed aspect of the invention. Applicant has cited some of Examiner's citations regarding few dependent claims, however Applicant has not provided an explanation of why it is believed that some limitations are not supported by the citations submitted. Examiner reminds the Applicant, that the entire Bentley reference discloses the Applicant's claimed invention.

Applicant presents no further arguments.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Marc Filipczyk
April 20, 2006

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